

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Creating an Environment of Success, Inc. (CES))	
	Map 069-04-0, Parcel 88)	Davidson County
	<i>Claim of Exemption</i>)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from a denial of an application for exemption of the subject property from ad valorem taxation. The application was filed with the State Board of Equalization (the "State Board") on January 19, 2006. By letter dated November 28, 2006 (copy attached for convenience), State Board staff attorney Mark Aaron notified the applicant of the denial on the following grounds:

The most recent application for exemption, filed 1/19/2006, sought to increase the partial exemption that was granted effective 1/1/2001. The partial exemption that had already been granted covered the area of the property used for the Youth About Business ("YAB") Training Center and YAB investment Club. The most recent application sought exempt status for 10,176 square feet used for YAB storage. In addition, the most recent application sought exempt status for property leased or held available for lease to several unrelated business[es], such as Little Philly's, BreJais Salon, A Touch of Elegance, Nwani Barber College, Posh and Nuttin But Wings. One tenant is Lords's House Ministry, a nonprofit church.

Creating an Environment for Success (CES) also doing business as Youth About Business ("YAB"), the applicant, timely appealed the staff attorney's initial determination to the State Board on February 22, 2007, pursuant to Tenn. Code Ann. § 67-5-212(b)(2). The undersigned administrative judge¹ conducted a hearing of this matter on April 23, 2007 in Nashville, Tennessee. Mr. Sam Kirk, President for Creating an Environment of Success, Inc., d/b/a as the "YAB" was present, Attorney Stephen Jasper of Bass, Berry and Sims represented the appellant in both counties. Metropolitan Attorney Margaret O. Darby, from the Metropolitan Legal Department appeared on behalf of the Davidson County Assessor of Property. John Cantrell, from the Davidson County Property Assessor's office and Mark Aaron, Staff Attorney for the State Board of Equalization were also present.

Findings of Fact and Conclusions of Law

The "YAB/CES" has two appeals pending before the State Board, the real property appeal which is the subject of this Order and an appeal dealing with personal property in

¹During the initial part of the hearing the Administrative Judge remembered and recognized that she had been a mentor for one of the YAB members during her tenure at Juvenile Court. The Administrative Judge disclosed this information and offered to recuse herself but all parties agreed that the hearing could go forward and that the administrative judge could continue to hear the matters in dispute.

Rutherford County which will be addressed in a separate Order. Prior to addressing the issues germane to this appeal Davidson County filed a Notice stating that CES (the name on the application) had not paid the undisputed taxes as required by rule of the SBOE [Rule 0600-1-.08(3)]. Mr. Jasper argued on behalf of the Taxpayer that while they recognized that the undisputed portion of the taxes should be paid, because of a legal snafu by the Taxpayer's prior legal counsel and information that the Taxpayer received and relied on from the Davidson County Trustee when they went to pay; currently the taxes have not been paid. The Administrative Judge took the issue under advisement. After having heard all the arguments the Administrative Judge feels that judicial economy dictates that the matters be resolved as expeditiously as possible and will therefore go forward on the matters at hand. The Taxpayer's reliance on the uncontroverted information received from the Davidson County Trustee shows that the Taxpayer attempted to pay but was told not to until this hearing was resolved.

Mr. Samuel E. Kirk, President and Executive Director, testified he began the business in 1992 in an effort to teach disadvantaged² youth the aspects of business. The pre-hearing brief filed on behalf of the appellants states that:

Experience is often the best teacher. Recognizing this, Creating an Environment of Success Inc. ("CES") makes real-life experience a focal point of the business and financial education provided to high school and middle school students in its Youth About Business training Program.

The set up if you will, was that prior to November 1, 2006, the front of the property in Davidson County, was used as storage for items in the Rutherford County Thrift Store. Since that time Mr. Kirk states that the Davidson County property began its own thrift store, "The Bargain Center/All Things Possible".³ The tax records show that the property contains some 30,050 square feet of space; the Taxpayer has several tenants which occupy some of the space. The administrative judge agrees with the Board's designee, Mr. Aaron when he states that:

. . . no matter how instructive or educational the students' involvement with landlord-related functions pertaining to the leased portions of the property may be, the statute and case law make it absolutely clear that any portion of a property that is actually being rented or held for such [commercial] purposes would never qualify for exemption.⁴

Mr. Kirk went further and explained that the organization serves to expose youth to the business opportunities by letting them participate in every aspect of a business' organization, including but not limited to the preparing and negotiating of leases, hiring and managing employees, compiling monthly statements for profit and loss analysis and even setting up a store and managing inventory for the store.

²Persons because of their background may not be exposed to the nuances of business.

³Originally, in 2001, 30% of the parking lot and land along with 8899 square feet of the building was granted an exemption.

⁴The Taxpayer states that the portion of the appeal that deals with the commercially occupied buildings is withdrawn from consideration.

Several other witnesses testified as to their involvement and participation in the center at “YAB/CES” as well as their participation in the Summer Business Camps at Vanderbilt University and the Championship competitions in New York City.⁵ There are apparently two levels of participants, with the younger students involved in the Mentorship program and the older/high school students involved in the actual Entrepreneurial program.

The physical structure located at 3510 West Hamilton Road is set up like a strip mall, for lack of a better description, with YAB inhabiting about 50% of the remaining 70%, that was not previously exempt. At this hearing Mr. Jasper reiterated that “YAB/CES” is not seeking exemption for their commercially held leases.

Mrs. Darby argues, appropriately, that the specific statutes that delineate the type of organization are the ones that should be used in determining an organization’s eligibility for exemption, in this case specifically T.C.A. § 67-5-224⁶ and T.C.A. § 67-5-212 (n)⁷.

Article II, section 28 of the Tennessee Constitution permits the legislature to **exempt** from taxation property which is “held and used for purposes purely religious, charitable, scientific, literary, or educational.” Under this authority, the General Assembly has decreed that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific, or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists... ; provided..., that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is **actually** used purely and exclusively for religious, **charitable**, scientific or **educational** purposes. [Emphasis added.] Tenn. Code Annotated § 67-5-212(a) (1) (A).

In this state, property tax exemptions are liberally construed in favor of religious, charitable, and educational institutions. *See, e.g., Christian Home for the Aged, Inc. v. Assessment Appeals Commission*, 790 S.W.2d 288, 291 (Tenn. Ct. App. 1990). Nonetheless, as the party seeking to change the initial determination on its application for exemption, the “YAB/CES” has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

In an analysis of the application, the Designee’s ruling, the accompanying explanation in the appeal application and the testimony of the parties at the hearing it appears to the administrative judge that the appellant, “YAB/CES” has met the burden to change a portion of the initial determination.

The distinctions cited by the Designee appear to have been explained sufficiently to the satisfaction of the administrative judge that under TCA § 67-5-212, in pertinent part:

⁵This organization apparently has other sister organizations throughout the country.

⁶Exemption for charitable or nonprofit organizations engaged in economic development.

⁷Exemptions for Thrift shops that meet specific qualifications.

(n) There shall be exempt from property taxation the real and personal property, or any part thereof, that is owned by a religious or charitable institution and that is occupied and used by such institution for a thrift shop; provided, that:

(1) The institution is exempt from payment of federal income taxes under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));

(2)(A) The thrift shop is operated as a training venue for persons in need of occupational rehabilitation; or

(B) The thrift shop is operated primarily by volunteers;

(3) The inventory of the thrift shop is obtained by donation to the institution that owns and operates the shop;⁸

(4) Goods are priced at levels generally ascribed to used property;

(5) Goods are given to persons whose financial situations preclude payment; and

(6) The net proceeds of the thrift shop are used solely for the charitable purposes of the institution that owns and operates the shop.

Clearly, either the situation with “YAB/CAS” has changed or the face to face explanations have cleared up some of the issues the business operation had produced (use of the property) predicated the denial of further exemption status. Mr. Kirk’s testimony as well as that of the actual participants shows that they have satisfied the requirements of the exemption statute by a careful review of each of the criteria in the statute.

As Administrative Judge Pete Loesch noted in New Fellowship Ministries, (Hawkins County, Initial Decision and Order, October 13, 2006):

NFM undoubtedly qualifies as a religious institution under T. C. A. § 67-5-212. *Yet, based on the factual situation at the time, the staff attorney's ruling on the application was clearly correct.* Arguably an applicant for exemption should not be allowed to submit new or additional information in an appeal from an initial determination. For better or worse, however, the Assessment Appeals Commission appointed by the State Board pursuant to T. C. A. § 67-5-1502 has followed the more lenient policy that “until an application is finally determined, the Board. . .should consider all pertinent evidence relative to the application at hand.” (emphasis supplied) Beth Sholom East Memphis Synagogue, Inc. (Shelby County, final Decision and Order, May 16, 2001). p3

In this case (“YAB/CES”) Mrs. Darby is correct in her argument the specific statute should be used to resolve this issue; that having been said the change in business tactics by opening the “Bargain Center/All Things Possible” in Davidson County was the turning point toward further compliance with the statute.

Order

It is, therefore, ORDERED that the initial determination of the staff attorney be modified to reflect (a) the portion of the property at 3510 West Hamilton Road that supports Bargain Center/All Things Possible, (the meeting and conference rooms as well as the accompanying

⁸Testimony by Mr. Kirk shows that 95% to 98% of the items for the Thrift Shop are donated with only occasional purchases to enhance the items in the store. The administrative judge does not believe that the intent of statute was 100%.

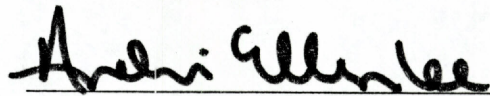
supporting land and parking spaces) shall be exempt effective October 1, 2006; the other commercially leased property shall remain taxable. The Assessor of Property shall measure the remaining commercially held portions of the property to determine how much of the remaining 70% of the original non-exempt property is now exempt.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 19th day of July, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Sam E. Kirk, Director, Youth About Business
Stephen Jasper, Attorney, Bass, Berry & Sims
Metropolitan Attorney Margaret O. Darby
John Cantrell, Exemption Administrator, Davidson County Assessor's Office

CESDAVIDSON



STATE OF TENNESSEE
STATE BOARD OF EQUALIZATION

SUITE 1700
JAMES K. POLK OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0280
PHONE (615) 401-7883
FAX (615) 253-4847

NOVEMBER 28, 2006

MR. MICHAEL D. SONTAG, ESQ.
BASS, BERRY & SIMS PLC
315 DEADERICK STREET
SUITE 2700, AMSOUTH CENTER
NASHVILLE, TN 37238

Re: Initial Determination - Exemption Application(s) – Property identified as 069-04-0 088 owned by CES & ASSOCIATES, INC. (YOUTH ABOUT BUSINESS) in DAVIDSON County

Dear MR. SONTAG, ESQ.:

This is to inform you that your application for property tax exemption is denied due to non-qualification. Note that the State Board granted a partial exemption to this property on 5/13/2005. **The partial exemption previously granted (8800 square feet of the building and 30% of the parking and land exempt; remaining improvements and land taxable) should remain in effect.** However, exemption of a greater portion of the subject property is not warranted at this time. A detailed explanation follows.

The most recent application for exemption, filed 1/19/2006, sought to increase the partial exemption that was granted effective 1/1/2001. The partial exemption that had already been granted covered the areas of the property used for the Youth About Business ("YAB") Training Center and the YAB Investment Club. The most recent application sought exempt status for 10,176 square feet used for YAB Storage. In addition, the most recent application sought exempt status for property leased or held available for lease to several unrelated business, such as Little Philly's, BreJais Salon, A Touch of Elegance, Nwani Barber College, Posh, and Nuttin But Wings. One tenant is Lord's House Ministry, a nonprofit church.

As to the space used for YAB Storage, its primary use is for storage in conjunction with a thrift shop located at 352 West Northfield Blvd., Suite # 3, Murfreesboro, TN 37129, in Rutherford County. A separate property tax exemption application was submitted for the personal property account residing at that address. For the reasons indicated in a separate 11/28/2006 determination letter, that exemption application was also denied. Because the use of the personal property used in the Rutherford County thrift shop fails to qualify for exemption under Tennessee Code Annotated § 67-5-212(n), the portion of the subject real property here used to support that thrift shop likewise fails to qualify for exemption. Therefore, the space used for YAB Storage and a proportionate amount of parking and land should remain taxable.

As to the space leased to unrelated businesses, the property clearly fails to qualify under Tennessee Code Annotated § 67-5-212(a) in several respects. In a letter received on 3/30/2006, the applicant created some confusion regarding the extent to which the representatives of the for-profit businesses that signed the

lease documents and are occupying and using portions of the building for commercial purposes felt that they had entered into binding leases. The organization does collect rents from these businesses, however. And in the end, the extent to which the businesses feel bound by the lease documents that representative of the businesses signed is immaterial. The applicant suggests that because the leases are drafted "for training purposes to teach our inner city and underserved youth participants how the world of real estate works," property actually occupied and used by unrelated, for-profit, commercial businesses can somehow qualify for exemption. This is simply not the case. Tennessee Code Annotated § 67-5-212(a)(1)(A) requires not only that property be **owned** by a religious, charitable, scientific, or nonprofit educational institution, but it also requires that the property be:

... **occupied and used** by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists, or which is occupied and used by another exempt institution purely and exclusively for one (1) or more purposes for which it was created or exists under an arrangement whereunder the owning institution receives no more rent than one dollar (\$1.00) per year; provided that the owning institution may receive a reasonable service and maintenance fee for such use of the property...

(emphasis added). The extent to which drafting leases and/or collecting rents from these tenants facilitates a real-world educational experience is absolutely immaterial. This part of the property, simply put, is neither occupied nor used by an exemptible institution. It is instead occupied and used for commercial purposes by for-profit businesses. Even given the most liberal reading of the statute possible, property leased to for-profit businesses is not eligible for exemption. This is further reinforced by additional language in Tennessee Code Annotated § 67-5-212(a)(1)(A), which states that "... no property shall be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion is actually used purely and exclusively for religious, charitable, scientific or educational purposes." Also instructive is the language following Tennessee Code Annotated § 67-5-212(a)(3)(B), which reads:

The real property of any such institution not so used exclusively for carrying out thereupon one (1) or more of such purposes, but **leased or otherwise used for other purposes**, whether the income received therefrom be used for one (1) or more of such purposes or not, shall not be exempt...

(emphasis added). A more concrete example of this principle can be found in Memphis Development Foundation v. State Board of Equalization, 653 S.W.2d 266, 270 (Tenn. Ct. App. 1983):

Appellee insists that its ownership and use of the Orpheum Theatre is entirely devoted to the charitable purpose "to promote urban development."

This argument is logical, but it does not comport with the constitutional and statutory scheme set out above. It ignores the strict requirement of the statute that any rental of the property be to an exempt institution at an annual rent of no more than one dollar. It also overlooks the fact that "urban development" can include many types of activities which are commercial and cannot be exempt under the statute. The promotion and encouragement of urban redevelopment may be an exempt activity, but demolition, remodeling and carrying on commercial activity on the redeveloped property is not an exempt activity.

This Court simply cannot accept the premise that a private, not-for-profit corporation can buy a historic building and offer it for rent for commercial use at a price in competition with owners of other buildings without subjecting the property to taxation.

Thus, no matter how instructive or educational the students' involvement with landlord-related functions pertaining to the leased portions of the property may be, the statute and case law make it absolutely clear

that any portion of a property that is actually being rented or held for such purposes would never qualify for exemption. Therefore, the portion of the building occupied and used by such entities and a proportionate amount of parking and land should remain taxable.

As to the space leased to the church, the above-quoted portion of Tennessee Code Annotated § 67-5-212(a)(1)(A) controls. Again, this portion of the statute allows for exemption of property owned by one qualifying religious, charitable, scientific, or nonprofit educational institution and:

... occupied and used by another exempt institution purely and exclusively for one (1) or more purposes for which it was created or exists under an arrangement whereunder the owning institution receives no more rent than one dollar (\$1.00) per year; provided that the owning institution may receive a reasonable service and maintenance fee for such use of the property...

Even assuming that the church would qualify as a religious institution in its own right, the owning institution receives at least \$1,000 per month from the church under the existing arrangement. This exceeds the statutory limit of one dollar per year plus a reasonable service and maintenance fee. Therefore, the portion of the building occupied and used by the church and a proportionate amount of parking and land should remain taxable.

As to any remaining vacant space that is either being held for future rental purposes or held for expansion of the organization's educational purposes, such portions of the building would not meet either the occupancy requirement or the use requirement of the statute. To again quote Memphis Development Foundation, supra at 271:

... It is insisted [by the appellee] that the mere acquisition of ownership for the intended purpose was sufficient to trigger the right to exemption. This Court does not agree. Neither the Constitution nor the statute allows the ownership of unused property by a tax exempt organization to confer exemption upon the property. It is the *use* and *not* the non-use which confers exemption. *Metropolitan Government of Nashville v. State Board of Equalization*, Tenn. 1976, 543 S.W.2d 587.

(emphasis and citation original). See also Metropolitan Government of Nashville and Davidson County v. State Board of Equalization, 543 S.W.2d 587 (Tenn. 1976), but note that the effective date of a property tax exemption determination is no longer tied to a particular taxable day under the statute but is instead controlled by Tennessee Code Annotated § 67-5-212(b)(3). See also the above-referenced portions of Tennessee Code Annotated § 67-5-212, requiring actual occupancy and use of the property for carrying out exempt purposes.

I should also point out that a thorough review of the files related to this exemption application also raised some concern regarding commercial activity supported by the already exempt portions of the property. While the extent to which these program activities take place in the portion of the property that had already been granted exemption is not entirely clear, it appears that some of the programs (e.g., YAB Specialty Company, YAB Lawn Care, and YAB Restaurant Division) have characteristics of commercial operations that are not normally eligible for exemption. See Book Agents of the Methodist Episcopal Church v. State Board of Equalization, 513 S.W.2d 514 (Tenn. 1974) (denying exemption to portion of property used to provide goods and services to the general public). Although outside of my area of expertise, I also had a minor concern regarding whether the investment portfolio created through the YAB Investment Club, funded by student dues and proportionately distributed back to students plus or minus any gain or loss upon graduation from the program, constituted a "security" within the meaning of state and federal securities statutes and regulations, and if so, whether it met the regulatory requirements therein. Because the bulk of the activity in the exempt portion of the property appears to consist of purely instructional activities and because there is some ambiguity as to the extent of commercial use, however, I

am not presently inclined to attempt downward adjustment of the previous State Board staff attorney's determination.

The applicant or the county assessor may appeal this determination by filing an appeal form with the appropriate fee *within 90 days from the date of this letter*. For your convenience, I have enclosed two appeal forms, one for this property and one for the related Rutherford County personal property account, should your client choose to appeal the two determinations. If the determination for the Davidson County real property is appealed, it is recommended that an appeal be filed for the Rutherford County personal property account due to the relationship between the two properties.

Sincerely,

Mark Aaron

Mark Aaron
Staff Attorney

cc: John Cantrell, Davidson County Assessor's Exemption Department
Charles Cardwell, Davidson County Trustee
Sam Kirk, CES & Associates

Enclosure
DENIAL.DOC